

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Barbara McCarty,	:	
Petitioner,	:	
	:	
v.	:	2:04-CV-321
	:	
Vermont State Mental	:	
Hospital, Paul Jarris,	:	
Commissioner, Vermont	:	
Department of Health,	:	
Respondents,	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Papers 4, 8 and 14)

Petitioner Barbara McCarty has filed a petition for habeas corpus, pursuant to 28 U.S.C. § 2254, seeking to vacate her involuntary commitment to the Vermont State Hospital. (Paper 7). McCarty has also filed a motion to enjoin her forced medication at the Vermont State Hospital, and to amend her petition to add additional respondents. (Papers 4 and 8, respectively). The respondent has moved to dismiss the petition, noting that McCarty has been released from the Vermont State Hospital and arguing that her petition is, therefore, moot. (Paper 14).

For the reasons set forth below, McCarty's motions for an injunction (Paper 4) and to amend her petition (Paper 8)

are DENIED. Because release from custody does not necessarily render a habeas petition moot, I recommend that the respondent's motion to dismiss (Paper 14) also be DENIED.

Factual Background

McCarty reports that on or about October 18, 2004, the Caledonia County District Court committed her to the Vermont State Mental Hospital "despite no legitimate credible evidence for the committal." (Paper 7, Complaint at 1). Her commitment appears to have been ordered in the course of a series of criminal actions brought against her by the State of Vermont. The state court ordered that her hospitalization be for a period of 90 days. (Paper 11, Attachment 1).

On February 9, 2005, the Washington County Family Court dismissed the Commissioner's application for continued treatment and ordered that McCarty be released from state custody. Specifically, the court found that McCarty was "not an imminent danger to herself or others, as the law requires for hospitalization" (Paper 14 Attachment at 12). The respondent now moves for dismissal

of McCarty's habeas corpus petition on the ground that her release from state custody renders the petition moot.

Discussion

I. Mootness

"The Supreme Court has held that a habeas petition is not necessarily mooted when the petitioner is released from prison, as collateral consequences of that conviction may still impinge on the petitioner post-release, and therefore a case or controversy may continue to exist." Perez v. Greiner, 296 F.3d 123, 125 (2d Cir. 2002) (citing Pollard v. United States, 352 U.S. 354, 358 (1957)). Accordingly, a habeas petition is rendered moot "'only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.'" Id. (quoting Sibron v. New York, 392 U.S. 40, 57 (1968)). In cases where the petitioner was involuntarily committed, courts have held that the petitioner's release does not moot the petition since (1) there is a likelihood that the petitioner will be vulnerable to future commitments based upon the state court's findings, and (2) the actual time of confinement

was too short to permit judicial review. See, e.g., Doe v. Gallinot, 657 F.2d 1017, 1021 n.6 (9th Cir. 1981).

Here, the respondent has failed to show that McCarty's initial commitment will not cause her "any collateral legal consequences." Indeed, the record in this case shows that McCarty has at least one child, and that her husband may have a restraining order barring her from the family home. In light of these facts, the initial finding of incompetency by the Caledonia County District Court could conceivably have a collateral impact upon McCarty's legal rights with respect to her access to her home and her family. Therefore, and absent a showing by the respondent that this case is legally moot, I recommend that the respondent's motion to dismiss (Paper 14) be DENIED.

II. Motion for Injunctive Relief

In addition to her habeas corpus petition, McCarty has filed a motion asking this Court to preemptively bar doctors at the Vermont State Hospital from medicating her involuntarily. (Paper 4). Although a case or controversy may still exist with respect to McCarty's commitment to state custody, her release makes injunctive relief with

respect to her treatment while in state custody unnecessary. Furthermore, McCarty's motion was filed in advance of any such forced medication, and there has been no showing that the medication actually occurred. Her motion (Paper 4) is, therefore, DENIED.

III. Motion to Amend Petition

Finally, McCarty has moved to amend her petition to add various respondents. (Paper 8). Rule 2 of the Rules Governing Section 2254 Cases states that "the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as the respondent." McCarty's initial petition properly named the Commissioner of the Vermont Department of Health as the respondent. (Paper 7). No other parties may be named as respondents. The motion to amend the petition (Paper 8) is, therefore, DENIED.

Conclusion

For the reasons set forth above, McCarty's motions for a stay or an injunction (Paper 4) and to amend her petition (Paper 8) are DENIED. I further recommend that the respondent's motion to dismiss (Paper 14) be DENIED.

Dated at Burlington, in the District of Vermont, this
16th day of March, 2005.

/s/ Jerome J. Niedermeier
Jerome J. Niedermeier
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).